



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106
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Keith Yagaloff

Complainant(s)

Notice of Meeting

against

Docket #FIC 2024-0628

First Selectman, Board of Selectmen, Town of East Windsor; Board of Selectmen, Town of East Windsor; and Town of East Windsor

Respondent(s)

September 30, 2025

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

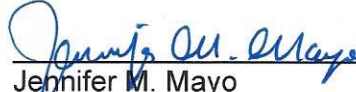
This will notify you that the Commission will consider this matter for disposition at its meeting which will be held **in person** at the Freedom of Information Commission's Hearing Room, Conference Room H, located on the ground floor at 165 Capitol Avenue, Hartford, Connecticut, at **2:00 p.m. on Wednesday, October 8, 2025.**

At that time and place, you will be allowed to offer oral argument concerning this proposed finding and order in person. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE 5:00 p.m. on October 7, 2025.** Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE 5:00 p.m. on October 7, 2025.** PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE 5:00 p.m. on October 7, 2025** and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

A handwritten signature in blue ink, appearing to read "Jennifer M. Mayo", is written over a horizontal line.

Jennifer M. Mayo

Acting Clerk of the Commission

Notice to: Keith Yagaloff
Attorney Mark J. Sommaruga

FIC# 2024-0628/ITRA/NAS//RB/JMM/2025-09-30

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Keith Yagaloff,

Complainant

against

Docket #FIC 2024-0628

First Selectman, Board of Selectmen,
Town of East Windsor; Board of
Selectmen, Town of East Windsor; and
Town of East Windsor,

Respondents

September 29, 2025

The above-captioned matter was heard as a contested case on May 8, 2025, July 10, 2025, and September 4, 2025, at which times the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By complaint received and filed on October 21, 2024, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by improperly entering executive session at its October 17, 2024 meeting under the “pretext” of discussing “potential litigation”.¹
3. It is found that on October 17, 2024, the respondents held a regular meeting of the Board of Selectmen. It is further found that the agenda for such meeting indicated that the respondent Board of Selectmen, would enter executive session for the purpose of discussing “potential litigation concerning the Town of South Windsor,” among other issues noticed on the agenda for such meeting. It is found that the respondents entered executive session during the October 17 meeting, at 7:58pm.

¹ The complainant also raised other allegations in his October 21, 2024 complaint; however, the complainant subsequently withdrew those claims on the record. Accordingly, the sole issue before the Commission in this matter is whether the respondents properly entered executive session to discuss “strategy or negotiations with respect to pending claims or pending litigation[.]” pursuant to §1-200(6)(B), G.S., as set forth below.

4. Section 1-225(a), G.S., provides, in relevant part, that “[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public.” Pursuant to §1-200(6)(B), G.S., the public may be excluded from an executive session held for “strategy and negotiations with respect to pending claims or pending litigation to which the public agency or member thereof, because of the member’s conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled.”

5. The phrase “pending claim” as defined in §1-200(8), G.S., means:

[a] written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief is not granted.

6. The phrase “pending litigation” as defined in §1-200(9), G.S., means:

(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief; or (C) *the agency’s consideration of action to enforce or implement legal relief or a legal right.*

(Emphasis added).

7. Strategy is defined as “a careful plan or method and the art of devising or employing plans or stratagems toward a goal Negotiations is a broad term . . . but in general it means the deliberation which takes place between the parties to a proposed agreement.” (Citations omitted; internal quotation marks omitted.) Bloomfield Education Assoc. v. Frahm, 35 Conn. App. 384, 390, cert. denied, 231 Conn. 926 (1994).

8. It is found that much of the necessary background in this matter concerns “Schanck Road.” As is relevant to this matter, it is found that Schanck Road is a private road located on a parcel of land owned by the Town of South Windsor but located within the boundaries of the Town of East Windsor. Moreover, it is found that Schanck Road provides access to an open space located within the Town of South Windsor but is the sole means of access for several residents of the Town of East Windsor to their homes.²

9. It is found that on October 7, 2024, the Town of South Windsor passed a resolution authorizing its Town Manager to “transfer the real property known as Schank [sic] Road located in the Town of East Windsor to the Town of East Windsor for the purposes of a public road, in accordance with all state and local law.” Additionally, in the recitals (i.e., the “whereas” clauses)

² The respondents were previously engaged in multiple legal proceedings against an entity by the name of West River Farms, LLC, concerning, generally, the maintenance obligations of “Schanck Road.” Such matters are not relevant to the above-captioned case as the topic of the October 17, 2024 executive session concerned the Town of South Windsor, and not West River Farms, LLC.

of such resolution, the Town of South Windsor, indicated that: (i) “the Town of East Windsor has the authority to accept land within its town limits for purposes of a public road and has a duty to maintain such public roads”; and (ii) “the Town of South Windsor has no authority to accept nor any duty to maintain public roads outside its Town limits.”

10. It is found that on October 11, 2024, the respondent First Selectman, received a letter from the Town Manager for the Town of South Windsor, attaching the resolution described in paragraph 9, above, and indicating that it was a “formal petition to the Town of East Windsor to accept Schank [sic] Rd as a public road” (the “South Windsor letter”).

11. It is found that, upon receipt of the South Windsor letter, described in paragraph 10, above, the respondent First Selectman, conferred with the Town Attorney to discuss “next steps” with respect to Schanck Road. The respondents testified, and it is found, that such “next steps” included, but were not limited to, filing a civil action against the Town of South Windsor, seeking relief in the form of a declaratory judgment defining the respective maintenance obligations for Schanck Road.

12. It is found that after conferring with the Town Attorney, the respondent First Selectman, added: “1-200(6)(B) – potential litigation concerning the Town of South Windsor,” under the executive session item on the respondents’ October 17 regular meeting agenda.

13. It is found that the Town Attorney was invited by the respondents to attend the relevant portion of the October 17 executive session for the purpose of explaining different courses of action the respondents could take with respect to Schanck Road. It is found that one such course of action was to seek a declaratory judgment as explained in paragraph 11, above.³

14. It is found that on November 14, 2024, the respondent First Selectman, sent a letter to the Town Manager for the Town of South Windsor in response to the South Windsor letter, informing him, among other things that: (i) the Town of East Windsor would not accept the transfer of Schanck Road in its current condition; and (ii) Schanck Road, as a private road, must be maintained by the owner of the road (i.e., the Town of South Windsor).

15. The respondent First Selectman testified, and it is found, that since issuing his November 14 response letter, described in paragraph 14, above, he has not received any further correspondence from the Town Manager for the Town of South Windsor, nor has the Town of South Windsor taken any further action with respect to transferring Schanck Road to the respondents.

16. The respondents maintain that the executive session convened at its October 17 regular meeting to discuss “potential litigation concerning the Town of South Windsor” was permissible pursuant to §1-200(9)(C), G.S., as they were considering an action to enforce or implement legal relief or a legal right.

³ The Commission notes that due to a dispute between the complainant and the Town Attorney, the respondents never discussed “potential litigation concerning the Town of South Windsor” during the executive session of the October 17 meeting. Nevertheless, because the respondents did *enter* executive session, the Commission must determine whether they had a proper basis for doing so.

17. Conversely, the complainant asserts that the respondents failed to meet their burden of establishing that the executive session item “potential litigation concerning the Town of South Windsor” pertained to a “pending claim or litigation,” because the purpose of the executive session was to “brainstorm about theoretical claims,” and the respondents did not identify “an actual or imminent proceeding, no decision to file, no identified forum beyond ‘superior court,’ no [specified] parties. . . , no draft pleadings, no litigation timetable, and no predicate written notice from any counterparty.”

18. In Furhman v. Freedom of Info. Comm’n, 243 Conn. 427, 433-34 (1997) (“Furhman”), our Supreme Court noted the differences between subdivisions (A), (B), and (C), of §1-200(9), G.S.:

[s]ubdivision [A] and [B] refer to litigation in terms of legal action. Subdivision [C], however, refers to ‘consideration of action to enforce or implement legal relief or a legal right.’ Absent from that subdivision are the terms ‘legal action’ and ‘an action.’ Words of a statute ‘shall be construed according to their commonly approved usage of the language’ General Statutes §1-1(a). Such reading of the statutes yields the interpretation that any action, not restricted to legal action, to implement or enforce a legal right concerns ‘pending litigation’ under the exception.

19. In Planning & Zoning Comm’n of Town of Monroe v. Freedom of Info Comm’n, 316 Conn. 1, 15 (2015) (“Monroe P&Z”), however, our Supreme Court clarified the scope of §1-200(9)(C), G.S., by noting the following:

In Furhman, this court indeed held that a public agency may convene an executive session to consider nonjudicial actions to enforce or implement legal relief or a legal right. We did not hold, however, that a public agency may convene an executive session to consider taking such nonjudicial actions in the absence of a pending or prospective legal proceeding in a court or forum other than the agency itself. . . . The New Milford town council convened an executive session to ***consider taking judicial action, including filing a declaratory judgement action and a lawsuit . . . and nonjudicial action, including hiring a lobbyist***. Thus, in Furhman, the public agency in question was not only considering taking nonjudicial actions in connection with a legal matter that already was pending before a different administrative agency. . . . But was also considering filing a lawsuit. Thus, there was no question in Furhman that the New Milford town council convened its executive session to discuss a pending claim or pending litigation.

(Emphasis in original omitted; emphasis added).

20. As found in paragraphs 12 through 14, above, the respondents, in response to the South Windsor letter, were contemplating seeking a declaratory judgment from the Superior Court defining their (and the Town of South Windsor's) obligations concerning Schanck Road.

21. The complainant maintains that the:

“consideration of action” not connected to litigation is exactly the kind of broad reading that would “swallow the rule” of open meetings, and that even a request for declaratory relief, without the agency in the posture of a litigating party before a tribunal, cannot create “pending” status.

Complainant's Post-hearing Brief, pg. 10.

22. In making such argument, the complainant appears to rely on the Commission's brief to the Supreme Court in Monroe P&Z, wherein the Commission cited to Chairperson, Connecticut Medical Examining Board et al., v. Freedom of Info' Comm'n, 310 Conn. 276 (2013) (“CT Medical Examining Board”).

23. CT Medical Examining Board, however, presents a different issue than the matter currently before the Commission. Specifically, that case does not pertain to the permissible scope of “pending litigation” as defined in §1-200(9)(C), G.S. The complainant's reliance on CT Medical Examining Board is flawed because it ignores the fact that unlike §§1-200(9)(A) and (B), G.S., the clear and unambiguous terms of subdivision (C) address instances where a public agency is acting *proactively*, instituting an action on its own initiative, rather than acting *reactively* to a demand seeking, or a complaint to enforce or implement, legal relief or a legal right.

24. Section 1-200(9)(C), G.S., read in conjunction with §1-200(6)(B), G.S., requires that the public agency be a party to the “pending litigation.” See Monroe P&Z, 316 Conn. 1, at 13. The Court further noted that the term “party” means “[o]ne *by* or against whom a lawsuit is brought.” (Emphasis added) Id. Therefore, “in order for §1-200(6)(B) to apply, the public agency either must be bringing or defending a prospective or pending lawsuit in court or some other legal action in an adjudicatory forum.” Id.

25. It is found, therefore, that the complainant's contention that the respondents' “consideration of an action [was] not connected to litigation” is unavailing. Specifically, the

respondents' consideration of filing an action for declaratory judgment⁴ *was* the prospective litigation, to which the respondents would *necessarily* be a party.⁵

26. Moreover, unlike §§1-200(9)(A) and (B), G.S., subdivision (C) only requires the public agency's *consideration* of an action to enforce or implement legal relief or a legal right.

27. As the term "consideration" is not defined in the FOI Act, the Commission applies its ordinary meaning. See §1-1(a), G.S. ("[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language. . .").⁶

28. It is found that the word "consideration" commonly means: (i) "a matter weighed or taken into account when formulating an opinion or plan"⁷; (ii) "the act of thinking about something carefully"⁸; and (iii) "to think carefully about a particular fact when deciding or judging something."⁹ It is further found that a synonym of "consideration" is "deliberation" which means "a careful weighing of the reasons for or against something."¹⁰

29. It is found that applying the common usage of the word "consideration" as described in paragraph 28, above, in conjunction with the precedent in Monroe P&Z, §1-200(9)(C), G.S., only requires that public agencies assess or contemplate *bringing* a prospective legal action. Nothing in the language of §1-200(9)(C), G.S., nor Monroe P&Z, requires public agencies to commit to or actually pursue a particular course of action before, during, or after the executive session.

30. It is found, therefore, that although the respondents did not ultimately pursue an action in Superior Court for a declaratory judgment with respect to the maintenance obligations of Schanck Road (opting instead to send the November 14 letter described in paragraph 14,

⁴While not expressly cited by the respondents, the Commission takes administrative notice of §52-29, G.S., which provides, in relevant part, that: "[t]he Superior Court in any action or proceeding may declare rights and other legal relations on request for such declaration, whether or not further relief is or could be claimed. The declaration shall have the force of a final judgment." Additionally, as noted in Monroe P&Z, seeking a declaratory judgment is a judicial action that would be appropriate to consider in executive session pursuant to §1-200(9)(C), G.S. See, Monroe P&Z, 316 Conn. 1, at 15.

⁵ The Commission notes that, for this reason, the issue of whether the South Windsor letter constituted a demand or claim for legal relief is not dispositive in this matter.

⁶ While it is true that the Supreme Court limited the scope of §1-200(9)(C), G.S., in Monroe P&Z, they did so *only* with respect to the types of actions that may be considered by a public agency in executive session. There is no indication in Monroe P&Z, that the term "consideration" was to be given any other meaning besides its common usage.

⁷ See "Consideration", MERIAM WEBSTER, <https://www.merriam-webster.com/dictionary/consideration>

⁸ See "Consideration", CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/consideration>

⁹ See *Id.*

¹⁰ See "Consideration", MERIAM WEBSTER THESAURUS, <https://www.merriam-webster.com/thesaurus/consideration>

above), there is sufficient evidence in the administrative record to establish that such action would have been *considered* during the October 17 executive session.

31. It is found that, by entering executive session to discuss “potential litigation concerning the Town of South Windsor,” the respondents intended to consider *both* “judicial” and “nonjudicial” options to respond to the South Windsor letter.

32. It is found, therefore, that the respondents entering executive session for the purpose of discussing “potential litigation concerning the Town of South Windsor,” was permissible under the facts and circumstances of this case.

33. Accordingly, it is concluded that the respondents did not violate §1-225, G.S.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint.

1. The complaint is dismissed.

/s/ Nicholas A. Smarra
Nicholas A. Smarra
as Hearing Officer

FIC2024-0628/HOR/NAS/09/29/2025